

Dear DOE Review Team,

To facilitate your review, following is a brief explanation for each of the amendments to the SMP and CAO regulations. This should be read in concert with the attached Ordinance 3062.

SECTION 1. Amend Sections 10.17 Duration of Permits of the Shoreline Master Program to be consistent with WAC 173-27-090(4) regarding the time limitation of SSDP as follows:

There is an inconsistency between City of Port Townsend Shoreline Master Program and WAC 173-27-090(4) regarding the time limitation of shoreline permit approvals.

Therefore, notwithstanding the provisions in our SMP, the 2 year time period to commence construction (and the 5 year time period for development activities) does not include the time “due to the need to obtain any other governmental permits and approvals” (per WAC 173-27-090(4)). Consistent with the WAC, the amended language clarifies that the city may, based upon specific findings, set a shorter expiration period.

SECTION 2. Amend Sections 10.14.3 City Council and 10.15 Appeals of the Shoreline Master Program consistent with the appeals procedures codified in the Port Townsend Municipal Code (PTMC) as follows:

The SMP currently refers to user to the PTMC Title 20 for the appeals procedure. However, in 2010, Chapter 20.01 Land Development Administrative Procedures was amended to refer the user to Section 10.15 of the SMP; Foot note 5 to Table 2 reads: “For appeals of shoreline permits, see Section 10.15 of the City of Port Townsend Shoreline Master Program. Furthermore, Chapter 20.01 was amended such that decisions by the Shoreline Administrator or Hearing Examiner could no longer be appealed to the City Council. These amendments created an inconsistency between the two documents. The proposal is to make corollary amendments to Sections 10.14.3 and 10.15 of the SMP.

SECTION 3. Amend Shoreline Master Program Section 14.11 Monitoring and Adaptive Management #3 paragraph 3 to require reassessment consistent with recent updates to the RCW 90.58.080 4(b):

ESHB 1478 effective July 22, 2011 provides cities and counties an extra year between required review and revision of shoreline master programs (Now required every eight years rather than seven.)

SECTION 4. Amend Critical Areas Section 19.05.030D, 19.05.040 and 19.05.050B (1) of the Port Townsend Municipal Code to clarify the overlap of Critical Areas ordinance, SMP and SEPA:

Pursuant to 19.05.050 B. Permit Processing - The director shall consolidate the processing of related aspects and permits from other regulatory programs which affect activities in critical areas, such as SEPA, shorelines, subdivision, etc., with the critical area review process established in this chapter to provide a timely and coordinated permit process as set forth in Chapter 20.01 PTMC.

SEPA Overlap: SEPA has broader application than CAO and thus, if SEPA is triggered (e.g., greater than 500cy or historic resources), CAO review should be addressed in the SEPA document. (See WAC 197-11-908). Proposed underline text is from the Department of Commerce model ordinance.

SMP Overlap: See the attached Director's Interpretation (Exhibit B) regarding the recent Futurewise v. W. Wash. Growth Mgmt. Hearings Board.

SECTION 5. Amend Critical Areas Section 19.05.040, Critical area permit requirements – Exemptions, nonconforming structures, application requirements, special reports, and advance determinations of the Port Townsend Municipal Code to clarify submittal requirements and documentation of waivers:

19.05.040 is intended to be a comprehensive list of submittal requirements, however, it currently lacks reference to the requirement for a stormwater plan (19.05.060 (5)) and site mitigation plans (19.05.060 (6)).

In regards waivers, it is standard practice to document a waiver of compliance with application requirements and delineations in a short waiver form, similar to an exemption from a shoreline substantial development permit. The City's fee schedule currently includes a critical areas waiver fee of \$100.00. During the Waiver process, the DSD director has the ability to require a HH/NOT as warranted.

SECTION 6. Amend Critical Areas Section 19.05.020 Definitions of the Port Townsend Municipal Code to add a definition for “critical slope”, “geotechnical engineer”, and “infill”, and to modify the definitions of “qualified critical areas consultant” and “steep slope”:

In Section 13 below, proposed amendments to Section 19.05.100 E uses the term “infill” however, infill is not defined in Chapter 19.05. The proposal is to use the same definition as found in Title 17, Zoning.

The code is internally inconsistent in the way “steep slope” is defined and measured. For example, the definition of “steep slope” refers to a run of 40-feet while the critical areas code in three other sections refers to a run of 25-feet (See Exhibit C attached); definition and classification in 19.05.100B are different and thus have caused confusion. Planning staff consulted with Ken Clow, Public Works Director and Hugh Shipman, Coastal Geologist with the Washington Department of Ecology (Exhibit D, email from Hugh Shipman) and Department of Commerce Guidance document: Appendix A

Example Code Provisions For Designating and Protecting Critical Areas. The definition 1a-c is taken from the example code.

In 2002, the City of Port Townsend modified its Critical Areas Ordinance based on a 2001 letter received from the Washington Dept. of Licensing (attached). Specifically, we modified the definition of “Qualified Consultant” as follows:

“Qualified critical area consultant” means a person who has the qualifications specified below to conduct critical areas studies pursuant to this chapter, and to make recommendations for critical area mitigation. For areas of potential geologic instability, the qualified critical areas consultant shall be an engineering geologist with a Washington specialty license in engineering geology as specified in Chapter 18.220 RCW.”

Not only are there very few that meet this requirement in our area (Exhibit 2, attached), but, it does not appear to be the appropriate license for the type of report we typically require (i.e., a report with mitigation measures); from the Washington State Licensing Website: Licenses and seals:

What professional designation do I use now that I am a licensed geologist?

The law doesn't address the issue of professional designations. The Geologist Licensing Board recommends the use of LG (Licensed Geologist), LHG (Licensed Hydrogeologist), and LEG (Licensed Engineering Geologist). These designations are consistent with the wording on geologist stamps. This is a recommendation, however, not a requirement.

What is the difference between an engineering geologist and a geotechnical engineer?

An engineering geologist is an earth scientist who has specialized in the application of geologic principles to civil works. A geotechnical engineer is a civil engineer who has specialized in the design and construction aspects of earth materials. Both professions share many of the same knowledge, skills and abilities. Each field, however, has particular strengths. Engineering geologists typically have greater skills in characterization of geologic conditions and processes, and in evaluation of how processes will be affected or will affect a specific development activity. Geotechnical engineers will typically have greater skill in development of site-specific geotechnical design recommendations and criteria.

Proposed Resolution: Modifying our code to be similar to the Bainbridge code with modifications suggested by Washington Department of Licensing.

SECTION 7. Amend Critical Areas Section 19.05.040 B Minor Critical Area

Permits of the Port Townsend Municipal Code to provide further guidance on what constitutes “minor” improvements:

The amendment provides further guidance on what constitutes “minor development” based upon Section 040E (g)(i) which allows waiver of special reports for when less than 250 square feet.

SECTION 8. Amend Critical Areas Section 19.05.060 D.4.a Performance Standards

of the Port Townsend Municipal Code to clarify the table accompanying the text regarding impervious surface limits:

This section pertains to impervious surfaces while the table uses the term “lot coverage” the terms are not interchangeable and thus the table should be amended consistent with the text. Impervious surface includes structures and all impervious surfaces such as parking areas and driveways while, per Chapter 17, Zoning, “Lot coverage” means the total ground coverage of all buildings or structures on a site measured from the outside of external walls or supporting members, including accessory buildings or structures, but not to include at-grade off-street parking lots, deck areas, terraces, swimming pools, pool deck areas, walkways, roadways, or driveways.

SECTION 9. Amend Critical Areas Section 19.05.080 for Fish and Wildlife Habitat Conservation Areas of the Port Townsend Municipal Code to correct inconsistencies and reflect the overlap with Title 16 Flood Damage Prevention and the mandate to comply with the Endangered Species Act:

Amendment is needed to correct an internal inconsistency – one section of the CAO says a habitat management plan is required “for any development in or adjacent to areas identified as habitat for endangered, threatened or priority species” while another says “for any development in areas identified as breeding or nesting habitat for endangered, threatened or priority species” (emphasis added). Staff consulted with Theresa Nation of WDFW, Land Use and Environmental Planner. The WAC 360-190-130 Fish and Wildlife Conservation Areas requires local jurisdictions to consider classification and designation of areas where endangered, threatened, and sensitive species have a primary association (emphasis added). The City may choose to provide broader protections such as protecting “breeding and nesting” habitat of priority species, which appears to be the intent here. (See Exhibit E for definitions of the terms: endangered, threatened, sensitive and priority).

Reflect Section 19.05.080 F1. Development in areas waterward of the ordinary high water mark require a habitat analysis.

The amendment incorporates verbatim language from FEMA’s NFIP-ESA Model Ordinance. Cities and counties must amend their local floodplain management ordinances to comply with Endangered Species Act (ESA) requirements by September, 2011. Local governments have three primary compliance methods:

1. *Adopt the newly revised model ordinance;*
2. *Demonstrate that existing plans and regulations provide protection for listed species; or*
3. *Comply project by project (by consulting with the federal services and preparing a habitat assessment).*

Port Townsend is currently considering Option #3.

The CAO and Floodplain Management Provisions, codified in Chapter 16 of the PTMC have significant Overlap. Proposed Amendments to the CAO are intended to acknowledge the overlap and the mandate to comply with the ESA. However, the amendments are not intended to demonstrate compliance through regulatory amendments - at this time, it is the City's intent to comply via project by project analysis as warranted. The intent is to require a habitat assessment prepared in accordance with the FEMA guidance for development applications in the regulatory floodplain.

SECTION 10 Amend Critical Areas Section 19.05.080 B1 and C1 for Fish and Wildlife Habitat Conservation Areas of the Port Townsend Municipal Code to improve consistency with WAC 365-190-130:

Both Sections B and C are amended to include areas with which federally listed species have a primary association consistent with WAC 365-190-130 Fish and Wildlife habitat conservation areas.

Section B. Classification, lists nine conservation areas, however only four are listed in C. Regulated development. This may have been intentional however, two conservation areas that require protection under the WACs are not listed in Section C and are proposed for inclusion: federally listed species and naturally occurring ponds.

Pursuant to WAC 365-190-080 Critical Areas, Counties and cities should clearly state that maps showing known critical areas are only for information or illustrative purposes.

Proposed revisions are based upon staff's review of Department of Commerce Guidance document: Appendix A Example Code Provisions For Designating and Protecting Critical Areas, WAC 365-190-080 and 130 and conversations with Theresa Nation of WDFW, Land Use and Environmental Planner, Washington Department of Fish and Wildlife.

(See Exhibit E, WDFW Definitions of Species Status)

SECTION 11. Amend Critical Areas Sections 19.05.080 F Performance Standards for Marine Habitats and new G. under Fish and Wildlife Habitat Conservation Areas of the Port Townsend Municipal Code to address new requirements for implementing the National Flood Insurance Program (NFIP) consistent with the Endangered Species Act (ESA):

RCW 36.70A.172(1) requires that local governments give special consideration to conservation and protection measures necessary to preserve or enhance anadromous fish.

SECTION 12. Amend Critical Areas Section 19.05.100 B Classification for Geologically hazardous areas of the Port Townsend Municipal Code to improve consistency with definition of “steep slope” in section 19.05.020 of the Critical Areas Ordinance:

Staff consulted with Ken Clow, Public Works Director and Hugh Shipman, Coastal Geologist with the Washington Department of Ecology and the Example Code Provisions for Designating and Protecting Critical Areas by the Department of Commerce. The language is taken from the example code provisions.

SECTION 13. Amend Critical Areas Section 19.05.100 D (2)(e) Landscaping Design for Geologically hazardous areas of the Port Townsend Municipal Code to cross-reference the associated mitigation plan:

Landscape design in Section 19.05.100 D (2) (e) is intended to be incorporated into the mitigation plan required under Section 19.05.050D (6) rather than a separate plan requirement.

SECTION 14. Amend Section 19.05.100 E Critical area 4 – Geologically hazardous area of the Port Townsend Municipal Code to more equitably apply buffers and setbacks for infill development and for single lots whether platted or unplatted.

As currently written, one could interpret Section E1 such that the buffer is established by the applicant’s engineering geologist; minimum buffers in Sections E2 and E3 do not apply. However, both city staff and Department of Ecology staff agree that the section should be read in its entirety and the minimum buffers should apply. Another weakness in the existing code is that it is silent in regards unplatted land and thus one may interpret that minimum buffers do not apply.

The amended language clarifies that minimum buffers apply to all properties (platted and unplatted). Furthermore, the revisions to Section E3 allow for infill subdivisions, thus allowing larger parcels to meet the underlying density provided the proposed plat does not allow an increase in the number of waterfront lots; thus the amendment does not increase the potential environmental impact. (Note: any application for subdivision would be reviewed for compliance with all applicable sections of the code including but not limited to Title 18 Land Division and Critical Areas Section 19.05.060D (3) New Short Plats, Binding Site Plans, and Subdivisions – Building Pad). (See analysis in the SEPA Addendum, Exhibit F).

SECTION 15. Amend Critical Areas Section 19.05.110 E 3(a) Buffer Widths of the Port Townsend Municipal Code to correct the table:

This is a minor housekeeping amendment to correct the placement of the header which has caused some confusion and delete repetitive language.